PRITHIPAL SINGH @ KIRPAL SINGH S/O WADHAWA SINGH

v.

DATO BANDAR, KUALA LUMPUR AND GOLDEN ARCHES RESTAURANT SDN. BHD. (INTERVENERS)

SUPREME COURT, KUALA LUMPUR
TUN DATO' SERI ABDUL HAMID BIN OMAR LP,
TAN SRI DATO' MOHD EUSOFF BIN CHIN SCJ,
DATO' PEH SWEE CHIN SCJ
[CIVIL APPEAL NO. 02-132-1993]
13 SEPTEMBER 1993

STATUTORY INTERPRETATION: Federal Capital Act 1960, s. 4(7) - Whether requires that the Secretary General or other public officer must be authorised by the Minister to carry out the functions, exercise the powers and discharge the duties of the Dato Bandar.

ADMINISTRATIVE LAW: Delegation of powers by Dato Bandar - Whether defective in wording - Federal Capital Act 1960 - Whether requires instrument of delegation to be in any special form.

RENT CONTROL: Application for recovery of possession by owner - For development purposes - Control of Rent Act 1966, s. 19 - Tenants ordered to vacate premises - Application for certiorari - Whether exercise of powers by Dato Bandar subject to review by Court.

The applicant applied for an order of *certiorari* to quash the order of the Dato Bandar Kuala Lumpur allowing the application of the interveners, the owner of the premises, for possession for development purposes pursuant to s. 19 of the Control of Rent Act 1966 (the 1966 Act). The trial Court dismissed the applicant's application and the applicant appealed further.

Counsel for the appellant contended that s. 4(7) of the Federal Capital Act 1960 (the 1960 Act) requires that the Secretary General or other public officer must be authorised by the Minister of the Ministry of the Federal Territory to carry out the functions, exercise the powers and discharge the duties of the Dato Bandar, it being conceded that from the time the application for possession was made until its disposal the office of Dato Bandar was vacant.

Counsel therefore submitted that as there was no evidence that the Minister had so authorised the Secretary General, the Secretary General's purported delegation of powers to the Deputy Director of Valuation under s. 4(6) of the 1960 Act was void and of no effect.

The other questions that arose for decision were whether the instrument of delegation was defective in wording and therefore invalid and whether the Dato Bandar's order giving possession to the owners of the premises was subject to review by the Court.

Held:

[1] Parliament had deliberately inserted a comma after the words "Federal Territory" in s. 4(7) of the 1960 Act and the significance cannot be ignored because with the comma the words "Secretary General" and "public officer" must be read disjunctively.

[2] In the event, under s. 4(7) of the 1960 Act, whenever the office of the Dato Bandar is vacant the Secretary General of the Ministry of the Federal Territory shall automatically carry out the functions and exercise the powers of the Dato Bandar. Where the office of the Dato Bandar and that of the Secretary General are vacant, the Minister of the Federal Territory may authorise in writing any public officer to carry out the functions and exercise the powers of the Dato Bandar.

[3] The 1960 Act does not require that the instrument of delegation must be in any special form. It was sufficient if the words used in the instrument of delegation are expressed in clear language to show that the Dato Bandar by that instrument intended to delegate his functions to the Director and Deputy Director of the Valuation Department.

[4] The Deputy Director of the Valuation Department, who heard the owners application for possession, had the jurisdiction to determine the application under s. 19 of the 1966 Act and in doing so he had also complied with the provisions of that section. He had also given the appellant the opportunity to make representations why the order under s. 19 should not be made and as such the order made by him was indeed final.

[Appeal dismissed with costs].

[Bahasa Malaysia Translation of Headnote**]**

PENTAFSIRAN STATUTORI: Akta Ibukota Persekutuan 1960, s. 4(7) - Sama ada dikehendaki bahawa Ketua Setiausaha atau Pegawai awam yang lain mestilah diberikuasa oleh Menteri untuk menjalankan kewajipan, mengamalkan kuasa dan menjalankan tugas-tugas Dato Bandar.

UNDANG-UNDANG PENTADBIRAN: Perwakilan kuasa oleh Dato Bandar - Sama ada tercacat-cela dalam perkataannya - Akta Ibukota Persekutuan 1960 - Sama ada mengkehendaki suratcara perwakilan dalam suatu bentuk khas.

KAWALAN SEWA: Permohonan untuk mendapatkan semula pemilikan oleh tuan punya - Bagi tujuan pembangunan - Akta Kawalan Sewa 1966, s. 19 - Penghuni-penghuni diperintahkan supaya mengosongkan premis - Permohonan untuk certiorari - Sama ada amalan kuasa oleh Dato Bandar tertakluk kepada kajian semula oleh Mahkamah.

Pemohon memohon untuk perintah *certiorari* bagi membatalkan perintah Dato Bandar Kuala Lumpur yang membenarkan permohonan pencelah, tuan punya premis tersebut, untuk pemilikan bagi tujuan pembangunan menurut s. 19 Akta Kawalan Sewa 1966 (Akta 1966). Mahkamah Perbicaraan telah menolak permohonan pemohon dan pemohon telah membuat rayuan selanjutnya.

Peguam perayu telah membahaskan bahawa s. 4 (7) Akta Persekutuan 1960 (Akta 1960) mengkehendaki Ketua Setiausaha atau pegawai awam yang lain mestilah diberikuasa oleh Menteri dari Kementerian Wilayah Persekutuan bagi menjalankan kewajipan, mengamalkan kuasa dan menjalankan tugas-tugas Dato Bandar, dan adalah diakui bahawa dari masa permohonan untuk pemilikan dibuat sehingga penyelesaiannya, jawatan Dato Bandar adalah kosong, oleh yang demikian Peguam tersebut menghujahkan bahawa memandangkan tiada bukti bahawa Menteri berkenaan telah memberikuasa yang sedemikian kepada Ketua Setiausaha, perwakilan kuasa yang dikatakan diberikan oleh Ketua Setiausaha kepada Timbalan Pengarah Penilaian di bawah s. 4 (6) Akta 1960 adalah terbatal dan tidak mempunyai kesan.

Persoalan lain yang timbul untuk diputuskan adalah sama ada suratcara perwakilan tercacat-cela dalam perkataannya dan oleh yang demikian ia adalah tidak sah dan sama ada perintah Dato Bandar yang memberikan pemilikan premis tersebut adalah tertakluk kepada kajian semula oleh Mahkamah.

Diputuskan:

[1] Parlimen telah dengan sengaja memasukkan tanda koma selepas perkataan "Wilayah Persekutuan" dalam s. 4(7) Akta 1960 dan kepentingannya tidak boleh diketepikan kerana dengan adanya tanda koma tersebut perkataan "Ketua Setiausaha" dan "pegawai awam" mestilah dibaca secara berbeza.

[2] Sekiranya, dibawah s. 4(7) Akta 1960 tersebut, apabila jawatan Dato Bandar adalah kosong Ketua Setiausaha dari Kementerian Wilayah Persekutuan secara automatik hendaklah menjalankan tugas-tugas dan mengamalkan kuasa-kuasa Dato Bandar. Apabila kedua-dua jawatan Ketua Setiausaha dan Dato Bandar adalah kosong, Menteri dari Kementerian Wilayah Persekutuan akan memberikuasa secara bertulis kepada mana-mana pegawai awam untuk menjalankan tugas-tugas dan mengamalkan kuasa-kuasa Dato Bandar.

[3] Akta 1960 tidak mengkehendaki suratcara perwakilan dalam suatu bentuk khas. Adalah mencukupi jika perkataan-perkataan yang digunakan dalam suratcara perwakilan dinyatakan dalam bahasa yang jelas untuk menunjukkan bahawa Dato Bandar melalui suratcara tersebut berniat untuk memperwakilkan tugas-tugas beliau kepada Pengarah dan Timbalan Pengarah Jabatan Penilaian.

[4] Timbalan Pengarah Jabatan Penilaian, yang mendengar permohonan tuan punya untuk pemilikan, mempunyai bidangkuasa untuk memutuskan permohonan tersebut dibawah s. 19 Akta 1966 tersebut dan dalam berbuat sedemikian beliau juga telah mematuhi peruntukan seksyen tersebut. Beliau juga telah memberikan peluang kepada perayu untuk membuat representasi mengapa perintah di bawah s. 19 tidak harus dibuat dan oleh yang demikian perintah yang dibuat oleh beliau adalah muktamad.

[Rayuan ditolak dengan kos]

Cases referred to:

Mohamed Ashroff v. The Commissioner for Federal Capital Kuala Lumpur [1972] 2 MLJ 69 ***(ovrl)***

Tehrani and Anor. v. Rastron [1972] 1 QB 182 ***(foll)***

Legislation referred to:

Control of Rent Act 1966, s. 19(1)(4)(b), (12)

Federal Capital Act 1960, s. 4(6)(7)

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - Cyrus Das (R. Abraham with him); M/s. Shook Lin & Bok
For the interveners - Bhag Singh (L.H. Chua with him); M/s. L.H. Chua & Co.

JUDGMENT

Mohd. Eusoff bin Chin SCJ:
Golden Arches Restaurant Sdn. Bhd. is the owner of premises No. 163 Jalan Tuanku Abdul Rahman which is subject to the Control of Rent Act 1966. The premises is occupied by a chief tenant and six sub-tenants. The appellant is a sub-tenant.

On 12 February 1991 the owner of the premises submitted an application under s. 19 of the Control of Rent Act for recovery of possession of the premises for development purposes.

For the purposes of dealing with applications under s. 19 of the Control of Rent Act, the Dato Bandar Kuala Lumpur had under s. 4(6) of the Federal Capital Act 1960, delegated his functions to the Director and also the Deputy Director of the Valuation Department of the Dewan Bandaraya of Kuala Lumpur.

The Deputy Director, Encik Wan Kat Few, having satisfied himself that the owner's application had complied with the requirements of s. 19(1) of the Control of Rent Act, issued notices dated 30 April 1991 to the owner, the chief tenant and sub-tenants of the premises to be present at the office of the Valuation Department on 8 May 1991 at 9.30 a.m. to discuss a number of matters relating to the owner's application for recovery of possession of the premises. The meeting was, however, adjourned to 14 May 1991 at the request of the appellant's learned Counsel Encik Karpal Singh.

On 14 May 1991 Encik Wan Kat Few conducted an enquiry attended by the owner, tenant, sub-tenants and their solicitors. The Notes of Enquiry at pages 118 to 120 of the appeal record shows that on 14 May 1991, Encik Karpal Singh had asked Encik Wan Kat Few to let him peruse the application submitted to the owner which Encik Wan Kat Few allowed. Encik Karpal Singh apparently did not object to the application but asked if Encik Wan Kat Few could give the appellant time of more than six months to vacate the premises to which Encik Wan Kat Few said that he would initially give six months as provided under s. 19(4)(b) of the Control of Rent Act and if more time was required, it had to be applied for before the expiry of the six months. Encik Wong Kat Few then ordered the tenants to vacate the premises by 13 November 1991 and that the owner to pay RM103,567.68 as compensation to the tenants.

The appellant then filed an application for an order of *certiorari* to quash the Dato Bandar's order made on 14 May 1991. The learned High Court Judge dismissed the application for *certiorari* (see [1993] 3 CLJ 381), and the appellant appealed to the Supreme Court.

A number of issues were raised in arguments before us by Encik Karpal Singh, the learned Counsel for the appellant.

Office of Dato Bandar, Kuala Lumpur

(Commissioner of the City of Kuala Lumpur)

It is not disputed that from the time when the application was made until its disposal by the Deputy Director of Valuation, the office of the Dato Bandar was vacant. Section 4(7) of the Federal Capital Act, 1960 provides as follows:

> 4.(7) Where the Commissioner is prevented from carrying out his functions, exercising his powers, or discharging his duties by sickness, absence or any other cause, or where the office of the Commissioner is for any period vacant, the Secretary General of the Ministry of the Federal Territory, or such other public officer as may be authorised in writing by the Minister shall carry out the functions, exercise the powers and discharge the duties of the Commissioner.

Encik Karpal Singh stated that at the relevant period there was in existence a Secretary General of the Ministry of the Federal Territory. He was of the view that s. 4(7) of the Federal Capital Act 1960 requires that the Secretary General or other public officer must be authorised by the Minister to carry out the functions, exercise the powers and discharge the duties of the Dato Bandar. He submitted that there is no evidence that the Minister had authorised the Secretary General under s. 4(7) of the Federal Capital Act 1960, and because of that the Secretary General could not carry out the functions, or exercise the powers and discharge the duties of the Dato Bandar. Consequently, the Secretary General's purported delegation of powers to the Deputy Director of Valuation under s. 4(6) of the same Act was void and of no effect.

We hesitate to agree with the views expressed by Encik Karpal Singh. We note that a punctuation mark, namely a comma is inserted by Parliament after the words "The Secretary General of the Ministry of Federal Territory" in s. 4(7) of the Federal Capital Act.

Normally to determine the intent of the law the Court would look at a sentence from a purely grammatical point of view so that in construing a statute the Court will disregard a punctuation or will re-punctuate it if that be necessary, in order to arrive at the true purpose and natural meaning of the words employed.

We find that Parliament had deliberately inserted a comma after the words "Federal Territory" and the significance cannot be ignored because without the comma, the words "Secretary General ..." and "public officer" must be read conjunctively, but with the comma, these words must be read disjunctively.

We are of the view that under s. 4(7) of the Federal Capital Act 1960, whenever the office of the Dato Bandar is vacant, the Secretary General of the Ministry of the Federal Territory shall automatically carry out the functions and exercise the powers of the Dato Bandar. Where, however, the office of the Dato Bandar and that of the Secretary General are vacant, the Minister of the Federal Territory may authorise in writing any public officer to carry out the functions and exercise the powers of the Dato Bandar.

Power to delegate

Section 4(6) of the Federal Capital Act 1960 states:

> 4.(6) Where by or under this Act or any other written law the Commissioner is empowered to exercise any powers or perform any duties he may by instrument in writing delegate, subject to such conditions and restrictions as may be prescribed in such instrument, the exercise of such powers or the performance of such duties to any person described by name or office:
>
> Provided that nothing in this section shall apply to any power to make any subsidiary legislation conferred upon him by or under this Act or any other written law.

The appellant's learned Counsel submitted that the delegation of powers by the Dato Bandar to the Deputy Director of Valuation was defective in wording, and therefore invalid. Further, it was issued by the Secretary General of the Ministry of the Federal Territory, and not by the Dato Bandar. This is how the delegation was worded -

"PERWAKILAN KUASA

SAYA ELYAS OMAR KETUA SETIAUSAHA KEMENTERIAN WILAYAH PERSEKUTUAN YANG MENJALANKAN TUGAS-TUGAS DATUK BANDAR KUALA LUMPUR MENGIKUT SEKSYEN 4(7) AKTA IBU KOTA PERSEKUTUAN 1960, DAN MENURUT KUASA-KUASA YANG TELAH DIBERIKAN KEPADA SAYA DI BAWAH SEKSYEN 4(6) AKTA IBU KOTA PERSEKUTUAN 1960 SAYA DENGAN INI MEMBERI KUASA KEPADA PENGARAH DAN TIMBALAN PENGARAH PENILAIAN DAN PENGURUSAN HARTA UNTUK MENJALANKAN TUGAS-TUGAS DI BAWAH SEKSYEN 18A AKTA KAWALAN SEWA, 1966.

BERTARIKH:..... (tak terang)

t.t.
ELYAS BIN OMAR
KETUA SETIAUSAHA
KEMENTERIAN WILAYAH
PERSEKUTUAN

Translation:

"DELEGATION OF POWERS

I ELYAS OMAR SECRETARY GENERAL OF THE MINISTRY OF THE FEDERAL TERRITORY IN CARRYING OUT THE FUNCTIONS OF THE COMMISSIONER OF THE CITY OF KUALA LUMPUR AS PROVIDED UNDER SECTION 4(7) OF THE FEDERAL CAPITAL ACT 1960, AND IN EXERCISING THE POWERS GIVEN TO ME UNDER SECTION 4(6) OF THE FEDERAL CAPITAL ACT 1960 HEREBY DELEGATE MY POWERS TO THE DIRECTOR AND THE DEPUTY DIRECTOR OF VALUATION AND MANAGEMENT OF PROPERTIES TO PERFORM ALL THE FUNCTIONS UNDER SECTION 18A OF THE CONTROL OF RENT ACT, 1966.

DATED:.....(illegible)

Sgd:
ELYAS BIN OMAR
SECRETARY GENERAL
MINISTRY OF THE FEDERAL
TERRITORY"

We note that s. 18A of the Control of Rent Act was subsequently renumbered by Parliament to read as s. 19 of the Act.

We find that the Federal Capital Act does not require that the instrument of delegation must be in any special form. It is therefore sufficient if words used in the instrument of delegation are expressed in clear language to show that the Dato Bandar, by that instrument intended to delegate his functions to the Director and Deputy Director of the Valuation Department. These are experienced and competent officers whom the Dato Bandar trusts can execute the delegated functions effectively. The act of delegating his functions exercised by the Dato Bandar is purely an administrative act and not a legislative one. By that delegation the Dato Bandar had put someone in his place to do what he is authorised to do by s. 19 of the Control of Rent Act. Consequently any decision of Encik Wan Kat Few in the exercise of the delegated power was the decision of the Dato Bandar.

Whether the Dato Bandar's Order is subject to review by the Court

In *Mohamed Ashroff v. The Commissioner for Federal Capital Kuala Lumpur* [1972] 2 MLJ 69, the Federal Court decided that the order made by the Dato Bandar under s. 18A (now s. 19 of the Control of Rent Act 1966) was not subject to review by the Court because subsection (12) states:

> 19.(12) Any order made by the Commissioner under this section shall be final and conclusive and shall not be questioned in any Court.

Later decisions of the Courts with which we agree show that such ouster provisions in an Act of Parliament does not preclude the Court from entertaining an application for an order of *certiorari*. Whether grounds for an order can be established and whether the application for *certiorari* can succeed, are matters which can be decided at the hearing of the substantive motion itself.

In *Tehrani and Anor v. Rastron* [1972] 1 QB 182, at 187-8 Lord Denning MR said in his judgment:

> The modern cases establish this principle: when Parliament says that a decision of an inferior tribunal is to be 'final', it does so on the assumption that the tribunal will observe the law. Parliament only gives the impress of 'finality' to the decision on the condition that it is reached in accordance with law: and the Queen's courts will see to it that this condition is fulfilled. Accordingly if a tribunal goes wrong in law and the error appears on the face of the record, the High Court will interfere by *certiorari* to quash the decision. It is not to be deterred by the enactment that the decision is 'final'. The decision may be final on the facts, but it is not final on the law. This was settled by *Reg. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957], 1 QB 574, where all the cases are collected. Likewise if a board or a Minister is entrusted with a decision affecting private rights, then even though it is said to be 'final', the High Court **can ensure that it is correct in point of law.**

We are of the view that when this application for *certiorari* is made to the Court, the learned Judge has to determine whether the order made by the Dato Bandar is indeed final. It is final if:

(i) the person making the order has the jurisdiction to make it,
(ii) he has complied with the provisions of the law which he is required to comply with, and
(iii) where his order is likely to impose any liability on, or affect the right of any person, that person has been given an opportunity to be heard.

We find that Encik Wan Kat Few acting for the Dato Bandar had the jurisdiction to determine the application under s. 19 of the Control of Rent Act, and in doing so he had also complied with the provisions of that section. He had given the appellant the opportunity to make representations why the order under s. 19 should not be made. The notes of inquiry by Encik Wan Kat Few show that the appellant was not in fact objecting to the application but only requested for time longer than six months to vacate the premises to which request he was told to make a separate application to the Dato Bandar.

The learned High Court Judge had dismissed the appellant's application for an order of *certiorari* to quash the order of the Dato Bandar. For the reasons given, we find that this appeal must be dismissed with costs.